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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA, )

10 Plaintiff, )

11 vs. )

12 )  
13 RAMON GONZALEZ, )

14 Defendant. )

2:07-cr-083 RCJ-RJJ

REPORT & RECOMMENDATION  
OF UNITED STATES  
MAGISTRATE JUDGE  
(Defendant's Motion to Suppress #13)

15 This matter was submitted to the undersigned Magistrate Judge on Defendant Ramon  
16 Gonzalez's Motion to Suppress (#13). The Court has considered the Defendant's Motion to  
17 Suppress (#18) , the Government's Response (#16), and the Defendant's Reply (#17), in addition  
18 to the testimony and evidence presented at the evidentiary hearing. The Defendant requested an  
19 opportunity to raise additional issues through a supplemental hearing after the evidentiary hearing.  
20 The Court granted the request, and now decides the motion.

21 **BACKGROUND**

22 The defendant, Ramon Gonzalez, was indicted by the Federal Grand Jury and charged with  
23 violating 18 U.S.C. § 922(g)(1), felon in possession of a firearm. The indictment was the result of  
24 a firearm found during a traffic stop on June 6, 2005. The charge is based on a Ruger Mark I semi-  
25 automatic .22 caliber handgun, serial number 10-39607, found in defendant's gym bag located in the  
26 trunk of the vehicle Gonzalez was driving.

27 The testimony at the hearing, established that on June 6, 2005, Officer J. Winn, began  
28 running random license plate numbers to determine whether vehicles being driven had current

1 registrations. At approximately 4:00 p.m., Winn ran a 2005 Dodge Neon, with Nevada license plate  
2 number "400SKJ". The computer search showed no registration for the vehicle. Winn ran the  
3 search several more times, to assure he was not making a mistake, but the results came back the same  
4 each time, the Nevada license plate number did not match the vehicle. At this point, Winn  
5 determined that he needed to stop the vehicle to inquire as to why the license plate number did not  
6 match the vehicle. Winn activated his overhead lights and notified dispatch of the stop. The vehicle  
7 pulled over and Winn approached the driver's side of the vehicle and asked the driver, Gonzalez,  
8 for his license, registration, and insurance. Winn asked the defendant where he was from and who  
9 owned the vehicle. Gonzalez responded that he did not know who the car belonged to because it was  
10 a rental and that a friend, whose name he could not remember loaned him the car. Gonzalez  
11 provided no documentation to show that he was authorized to drive the vehicle. During this time  
12 Gonzalez acted extremely nervous and would not look Winn in the eyes. Due to the defendant's  
13 nervousness, Winn asked if he had ever been arrested. Gonzalez answered in the affirmative stating  
14 that he had served time for armed robbery and drug offenses. Winn wrote down the vehicle  
15 identification number to run a search on the vehicle. Winn left the defendant in the Neon and  
16 returned to his patrol car to run a VIN search. The VIN search produced no matches with the license  
17 plate number. Winn believed the vehicle might be stolen. At this time, Winn called Officer Michael  
18 Fisher for back-up. While Winn waited for Fisher to arrive, Winn ran an outstanding warrant  
19 search<sup>1</sup> on Gonzalez. Fisher arrived at around 4:15 p.m. to 4:20 p.m. Winn explained the situation  
20 to Fisher.

21 Fisher then ran the same searches on the vehicle which showed that the license plate did not  
22 match the vehicle. Fisher and Winn approached the vehicle and ask Gonzalez to step out of the  
23 vehicle. He stepped out of the vehicle and Fisher again asked who was the owner of the vehicle, or  
24 the name of his friend that had loaned him the vehicle. Gonzalez could not provide this information.  
25 Winn observed that the defendant continued acting nervously by constantly looking at the ground  
26 and not at the officers. Due to his nervousness, Winn and Fisher concluded that Gonzalez was trying

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27  
28 <sup>1</sup> This search is conducted by calling dispatch and having them run a national warrant database search. Results  
for this type of search may take upwards of five to ten minutes.

1 to hide something. At this point, Fisher asked for consent to search the vehicle for narcotics.  
2 Gonzalez was told he could refuse consent, but he gave verbal consent to allow Winn and Fisher to  
3 search the vehicle. Fisher then filled out a Las Vegas Metropolitan Police Department Consent to  
4 Search Card and read it to the defendant. It reads:

5 I, Ramon Gonzalez- Olivera, having been informed of my right not  
6 to have a search made of the premises/property listed hereafter  
7 without a search warrant issued by a court of jurisdiction, and of my  
8 right to refuse to consent, to a search for items directly or indirectly  
related to the investigation of Traffic Stop, do hereby voluntarily  
consent to a search of . . . Vehicle 400-SKJ-NV; 05 Dodge Neon &  
Trunk, for the following: Narcotics.

9 Government Exhibit 2. Fisher then warned Gonzalez that he did not need to give consent or sign  
10 the card, that it was voluntary to do so. The defendant was given time to review the Consent to  
11 Search Card. After reviewing the Consent to Search Card, Gonzalez stated that he understood his  
12 rights and then signed the card. Gonzalez was asked to face the front of the patrol car, with his hands  
13 placed on the hood, while Winn began the search. While Winn searched the trunk of the vehicle,  
14 he noticed a gym bag. Winn opened the gym bag and found a loaded Ruger Mark I semi-automatic  
15 .22 caliber handgun, serial number 10-39607, wrapped in a pair of sweatpants. Winn advised Fisher  
16 of the firearm and Fisher placed Gonzalez under arrest.

17 Gonzalez now seeks to suppress the firearm found during the police search. To determine  
18 whether to grant the defendant's Motion to Suppress (# 13), the Court must first determine whether  
19 Winn's actions constituted an unreasonable seizure within the Fourth Amendment; second, whether  
20 the scope of the traffic stop was constitutional; third, whether Defendant gave valid consent to the  
21 search; and fourth, whether Defendant was coerced into believing that he had no authority to  
22 withdraw his consent during the search.

### 23 DISCUSSION

24 The Fourth Amendment provides, in pertinent part, "[t]he right of the people to be secure in  
25 their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST.  
26 amend. IV. The Supreme Court has stated that "[n]o right is held more sacred, or is more carefully  
27 guarded, by the common law, than the right of every individual to the possession and control of his  
28 own person, free from all restraint or interference of others, unless by clear and unquestionable

1 authority of law.” Terry v. Ohio, 392 U.S. 1, 9 (1968). This right protects people, and wherever a  
 2 person may harbor a reasonable expectation of privacy, from all unreasonable searches and seizures.  
 3 Terry, 392 U.S. at 9. If a search or seizure is conducted without probable cause or without a valid  
 4 search warrant, an individual’s Fourth Amendment rights are violated. Katz v. United States, 389  
 5 U.S. 347, 357 (1967).

### 6 **Standing**

7 To have standing to invoke Fourth Amendment protections, a person must demonstrate a  
 8 legitimate expectation of privacy by showing: (1) a subjective expectation of privacy; and (2) an  
 9 objectively reasonable expectation of privacy. Smith v. Maryland, 442 U.S. 735, 740 (1979). The  
 10 defendant bears the burden of demonstrating standing by showing that a legitimate expectation of  
 11 privacy in the area searched existed. Rawlings v. Kentucky, 448 U.S. 98, 104 (1980); United States  
 12 v. Dorias, 241 F.3d 1124, 1130 (9th Cir. 2001). The Ninth Circuit holds that when standing issues  
 13 are raised pertaining to rental cars, “[a]n unauthorized driver may have standing to challenge a search  
 14 if he or she has received permission to use the car.” United States v. Thomas, 447 F.3d 1191, 1199  
 15 (9th Cir. 2006). Thus, “a defendant who lacks an ownership interest may still have standing to  
 16 challenge a search, upon a showing of ‘joint control’ or ‘common authority’ over the property  
 17 searched.” Thomas, 447 F.3d at 1198. It then becomes the burden of the defendant to show by a  
 18 preponderance of the evidence that a legitimate expectation of privacy exists. U.S. v. Caymen, 404  
 19 F.3d 1196, 1199 (9<sup>th</sup> Cir. 2004).

20 In the present matter, Gonzalez does not have standing to challenge the search of the rental  
 21 car. He incorrectly argues that the Government bears the burden to raise standing. The defendant  
 22 always bears the burden of demonstrating standing, or a reasonable expectation of privacy in the  
 23 property searched. United States v. Singleton, 987 F.2d 1444, 1447 (9th Cir. 1993). It is well  
 24 established, by the Ninth Circuit, that in order for a person to challenge the search of a rental car,  
 25 evidence of permission to use the car must be shown. Thomas, 447 F.3d at 1199. Gonzalez failed  
 26 to provide the Court with any evidence showing possession or authority to drive the rental car;  
 27 therefore, he has no standing to challenge the search of the rental car. Nevertheless, the police did  
 28 not just search the car, they searched a bag, owned by defendant, which was found in the trunk of

1 the car. Gonzalez's supplemental brief raised the issue of standing, as applied to the gym bag.

2 This Court must now determine whether the defendant has standing to challenge the search  
 3 of his bag, despite the lack of standing to challenge the search of the rental car. The Supreme Court  
 4 in California v. Acevedo, analyzed whether the automobile exception to a warrantless search applied  
 5 to the search of a closed container located inside of a vehicle. 500 U.S. 565, 579-80 (1991).  
 6 Although Acevedo was decided using the automobile exception doctrine, the Supreme Court noted  
 7 that if officers have probable cause to think that a container contains contraband, then a warrantless  
 8 search will be allowed. 500 U.S. at 580. However, if probable cause is absent, then the  
 9 Government cannot search the container without obtaining a search warrant because a reasonable  
 10 expectation of privacy exists in the container. Acevedo, 500 U.S. at 580; see also United States v.  
 11 Buchner, 7 F.3d 1149, 1154 (5th Cir. 1993) (stating that "[t]he owner of a suitcase located in  
 12 another's car may have a legitimate expectation of privacy with respect to the contents of his  
 13 suitcase."). Here, there was no dispute of ownership of the gym bag, Gonzalez acknowledged that  
 14 the gym bag was his. Although the vehicle did not belong to him, the gym bag did, and any  
 15 reasonable person would have a legitimate expectation of privacy in the bag. Therefore, the Court  
 16 concludes that the defendant has standing to challenge the search of his gym bag. Before  
 17 determining whether the search of the gym bag was constitutional, the Court must determine whether  
 18 the officers' actions leading up to the search were constitutional.

### 19 I. Traffic Stop

20 The Ninth Circuit holds that "[a]n automobile stop by police is a seizure within the meaning  
 21 of the Fourth Amendment . . . [and s]uch a stop is subject to the constitutional requirement that it  
 22 not be unreasonable." United States v. Garcia, 205 F.3d 1182, 1186 (9th Cir. 2000). However, "if  
 23 the officer had probable cause to believe that a traffic violation had occurred, the seizure is  
 24 [considered] reasonable." Garcia, 205 F.3d at 1186-87. Moreover, an officer may stop a vehicle,  
 25 based on the totality of the circumstances, if the officer has a reasonable or well-founded suspicion.  
 26 United States v. Olafson, 213 F.3d 435, 439 (9th Cir. 2000). "Reasonable suspicion exists when an  
 27 officer is aware of specific, articulable facts, which, together with objective and reasonable  
 28 inferences, form a basis for suspecting that the particular person to be detained has committed or is

about to commit a crime.” Olafson, 213 F.3d at 439. The totality of the circumstances is to be taken into account as well as the facts interpreted in light of a trained officer’s experience. United States v. Sokolow, 490 U.S. 1, 8 (1989). In the Ninth Circuit, a traffic violation alone is sufficient to establish reasonable suspicion. United States v. Choudhry, 461 F.3d 1097, 1100-01(9th Cir. 2006).

In the present matter, probable cause to believe a traffic violation had occurred justified the stop of the vehicle. At the hearing it was shown that the license plate on the vehicle did not match the registration. Further, Winn testified that based on his training and prior experience, when a license plate does not match with the registration, the vehicle may be stolen. Based on these facts, Winn had probable cause to believe that the vehicle Gonzalez was driving might be stolen. Stopping the vehicle to investigate was reasonable.

## II. Scope of the Traffic Stop

The Supreme Court has held that, during an investigatory detention, police contact must be reasonably related in scope to the circumstances which initially justified the detention. Terry, 392 U.S. at 20. The Ninth Circuit holds that “[t]he length and scope of detention must be justified by the circumstances authorizing its initiation.” Pierce v. Multnomah County, 76 F.3d 1032, 1038 (9th Cir. 1996). Once “an officer has obtained sufficient information to issue a citation, a continued detention without probable cause to arrest for a crime is unreasonable.” Pierce, 76 F.3d at 1038. However, an “officer’s subjective intentions do not make continued detention illegal, so long as the detention is justified by the circumstances viewed objectively.” Ohio v. Robinette, 519 U.S. 33 (1996).

In the case at hand, Gonzalez argues that the officers detained him longer than necessary to effectuate the traffic stop for an unregistered vehicle. The defendant agrees with the Government that the Supreme Court holds that an officer lacking reasonable suspicion may ask questions unrelated to the traffic stop to broaden the scope of the stop. United States v. Mendez, 476 F.3d 1077, 1080-81 (9th Cir. 2007). The testimony at the hearing established that Winn stopped Gonzalez to investigate whether the vehicle was registered or stolen. Winn asked Gonzalez for the documentation routinely requested in a traffic stop: driver’s license; registration; and proof of insurance. Gonzalez only provided Winn with a driver’s license and could not provide proof of

1 ownership of the vehicle. Due to his extreme nervousness, Gonzalez was asked if he had ever been  
2 arrested. He answered in the affirmative and added that he had served time for armed robbery and  
3 other offenses. It was the defendant's nervous actions and lack of vehicle documentation that caused  
4 Winn to investigate the situation further. Winn called for backup, and while waiting for backup, ran  
5 several more searches on the vehicle, including a search for any outstanding warrants on Gonzalez.  
6 Under the circumstances presented to Winn, these searches were reasonable to effectuate the purpose  
7 of the traffic stop. Although it took backup about fifteen to twenty minutes to arrive on the scene,  
8 this amount of time is reasonable considering rush hour traffic at that time of day Gonzalez was  
9 stopped.

10 When backup arrived, the determination of whether the vehicle was stolen remained  
11 unresolved. Fisher ran additional searches on the vehicle but the license plate and registration came  
12 back different. To further the investigation, both Winn and Fisher approached the defendant and  
13 began questioning him. Gonzalez stated that he thought the car was a rental but he could not provide  
14 the name of the person who rented it, or the person who loaned it to him. This coupled with the  
15 defendant's extreme nervousness, have a sense to both officers that Gonzalez was trying to hide  
16 something, or that a crime was afoot. This caused Winn and Fisher to ask Gonzales if they could  
17 search the vehicle. Even absent reasonable suspicion, under Mendez, the officers were allowed to  
18 ask for consent to search the vehicle. 476 F.3d at 1080-81.

19 Based on the totality of the circumstances presented to both officers, the Defendant's  
20 detention was not unnecessarily prolonged without adequate justification. Winn testified that based  
21 on his training and prior experience, he knew that crimes were committed using stolen vehicles, and  
22 until it could be proved that the car was not stolen, Winn was justified in believing that the vehicle  
23 was stolen. The Court finds that the traffic stop was reasonable and that the scope of the detention  
24 was tailored to its initial justification. The fifteen to twenty minutes that the Defendant had to wait  
25 for police backup was not unreasonable. Gonzalez was not removed from the car or placed in  
26 handcuffs, but was allowed to remain in the vehicle while the investigation was ongoing.

### 27 **III. Consent to Search**

28 According to the Fourth Amendment, the Government may not search a person unless a valid



1 search warrant is executed; however, certain exceptions exist for this rule. Katz, 389 U.S.at 357.  
2 Warrantless searches are permissible if it falls within one of the “specifically established and  
3 well-delineated exceptions.” Katz, 389 U.S. at 357. One of these “specifically established and  
4 well-delineated exceptions” is a search conducted after consent is given. Florida v. Jimeno, 500 U.S.  
5 248, 250-51 (1991).

6 “It is well settled that a search conducted pursuant to a valid consent is constitutionally  
7 permissible.” United States v. Soriano, 361 F.3d 494, 501 (9th Cir. 2004). The Supreme Court has  
8 “long approved consensual searches because it is no doubt reasonable for the police to conduct a  
9 search once they have been permitted to do so.” Jimeno, 500 U.S. at 251. The government bears  
10 the burden of showing that consent to a warrantless search was voluntary. Jimeno, 500 U.S. at 251;  
11 see also Soriano, 361 F.3d at 501. The validity of a person’s consent is a question of fact, and its  
12 resolution depends upon the totality of the circumstances. United States v. Cormier, 220 F.3d 1103,  
13 1112 (9th Cir. 2000). The Ninth Circuit considers several factors to determine whether a person  
14 freely consents to a search: “(1) whether the defendant was in custody; (2) whether the arresting  
15 officers had their guns drawn; (3) whether Miranda warnings were given; (4) whether the defendant  
16 was told he had a right not to consent; and (5) whether the defendant was told that a search warrant  
17 could be obtained.” Cormier, 220 F.3d at 1112. However, there is no single controlling factor.  
18 United States v. Kaplan, 895 F.2d 618, 622 (9th Cir. 1990). These factors are merely guideposts,  
19 not a mechanized formula to resolve the voluntariness inquiry. Soriano, 361 F.3d at 502. No one  
20 factor is determinative because just as “every encounter has its own facts and its own dynamics . .  
21 . so does every consent.” United States v. Morning, 64 F.3d 531, 533 (9th Cir. 1995).

22 Here, based on the totality of the circumstances and after considering the applicable factors,  
23 the Court concludes that Gonzalez voluntarily consented to the search. First, the defendant was not  
24 in custody when consent was given to search the vehicle he was driving. Winn and Fisher asked  
25 him to step out of the vehicle. No restraints were placed on him. Second, neither Winn nor Fisher  
26 had their guns drawn when Gonzalez was asked for consent. Third, Miranda warnings did not need  
27 to be given because Gonzalez was not in custody. Soriano, 361 F.3d at 504. Fourth, Gonzalez was  
28 told on two occasions that he had a right not to consent. The first instance was after Fisher asked



1 for verbal consent to search the car, and the second instance was before having Gonzalez sign the  
2 consent to search card. Finally, evidence was presented to show that neither officer told Gonzalez  
3 that a search warrant could be obtained.

4 Based on the totality of the circumstances, Gonzalez freely consented to the search. Because  
5 he did not have standing to challenge the search of the vehicle, the consent would only apply to  
6 property where he had a reasonable expectation of privacy. This leads to the question of whether  
7 the scope of Defendant's consent applied to the gym bag. The Court finds that when Gonzalez  
8 willfully gave consent to search for narcotics, he implicitly gave consent to search his gym bag.

### 9 **Scope of Consent**

10 It is a Fourth Amendment rights violation for a consensual search to exceed the scope of a  
11 suspect's given consent. United States v. McWeeney, 454 F.3d 1030, 1034 (9th Cir. 2006). The  
12 scope of a suspect's consent can be measured using the "objective reasonable" standard outlined in  
13 Jimeno: "what would the typical reasonable person have understood by the exchange between the  
14 officer and the suspect?" 500 U.S. at 251. If a suspect's consent "would reasonably be understood  
15 to extend to a particular container, the Fourth Amendment provides no grounds for requiring a more  
16 explicit authorization." Jimeno, 500 U.S. at 252.

17 In the case at hand, Gonzalez implicitly gave Winn and Fisher consent to search the gym bag.  
18 The "objective reasonable" test demands analysis by what a typical reasonable person would have  
19 understood in the situation. Jimeno, 500 U.S. at 251. So the pertinent inquiry is whether the  
20 defendant would have understood the exchange with Winn and Fisher as indicating that his  
21 authorization extended to a search of the gym bag located in the trunk. Fisher informed the defendant  
22 that the officers planned to search the entire vehicle for narcotics, including the trunk. It is  
23 reasonable, and common knowledge, that drugs are typically transported in bags or secret  
24 compartments inside vehicles. It is also reasonable for a typical person, when confronted by police  
25 and asked to search for drugs, to think that the search would be conducted thoroughly, including  
26 searching an unlocked gym bag which may possibly hold drugs.

27 Fisher asked for verbal consent to search the entire vehicle for narcotics and Gonzalez gave  
28 consent. Fisher, being thorough, pulled out a LVMPD Consent to Search Card, filled it out, and

1 presented it to the defendant. Gonzalez was able to hold and read the card, analyze it, and decide  
2 whether to sign it. He demonstrated a command of the English language at the suppression hearing.  
3 Gonzalez was given ample time to review and understand the card. The Consent to Search Card  
4 expressly stated: “to a search for items directly or indirectly related to the investigation” inside of  
5 the “trunk.” Government Exhibit 2. At this point, the defendant knew: (1) that he was transporting  
6 a gun inside his gym bag located in the trunk; and (2) that the officer’s were looking for drugs or  
7 anything indirectly related to drugs inside the trunk of the vehicle. He had the opportunity to revoke  
8 his consent or ask the officers to explain what “indirectly related to the investigation” meant;  
9 however, neither occurred. At this point, any reasonable person hiding something illegal in the trunk  
10 would know that the possibility of officers discovering the illegal thing in the trunk was likely to  
11 occur. So when Gonzalez gave consent to search the trunk, he implicitly acknowledged that in order  
12 to search for narcotics, the officers would have to look inside his gym bag.

13 “The community has a real interest in encouraging consent, for the resulting search may yield  
14 necessary evidence for the solution and prosecution of crime, evidence that may insure that a wholly  
15 innocent person is not wrongly charged with a criminal offense.” Jimeno, 500 U.S. at 252. The  
16 Court finds that the defendant’s consent to search extended to his gym bag located in the trunk of  
17 the vehicle.

#### 18 **IV. Authority to Withdraw Consent**

19 Once a person has given consent to search their personal property, the person continues to  
20 have a constitutional right to modify or withdraw the general consent at anytime. McWeeney, 454  
21 F.3d at 1035. “Just as the Fourth Amendment would be valueless without the use of the exclusionary  
22 rule, so too would the right to withdraw consent be valueless if law enforcement officers” coerce  
23 citizens into believing that they have no authority to withdraw the consent. McWeeney, 454 F.3d  
24 at 1035. The Ninth Circuit holds that it is within the discretion of the court to determine whether  
25 officers “created a setting in which the reasonable person would believe that he or she had no  
26 authority to limit or withdraw the consent. McWeeney, 454 F.3d at 1035. The question that must  
27 be answered is “whether a reasonable person would feel free to decline the officers’ requests or  
28 otherwise terminate the encounter.” Bostick, 501 U.S. at 436. The Ninth Circuit has provided the

1 court with factors to consider in order to determine whether the “officers’ conduct is objectively  
 2 recognizable as intimidation directed mostly (or exclusively) at coercing [Defendant] into believing  
 3 that [he] had no right to withdraw or delimit [his] consent once it was given, and whether a  
 4 reasonable person faced with the officers’ conduct would have believed that no such right existed.”

5 McWeeney, 454 F.3d at 1037. The factors are:

- 6 (1) the language used to instruct the suspect;
- 7 (2) the physical surroundings of the search;
- 8 (3) the extent to which there were legitimate reasons for the officers  
 to preclude the suspect from observing the search;
- 9 (4) the relationship between the means used to prevent observation of  
 the search and the reasons justifying the prevention;
- 10 (5) the existence of any changes in circumstances between when  
 consent is obtained and when the officers prevent the suspect from  
 observing the search; and
- 11 (6) the degree of pressure applied to prevent the suspect either from  
 observing the search or voicing his objection to its proceeding further.

12 McWeeney, 454 F.3d at 1037.

13 Officers Winn and Fisher did not create a setting where Gonzalez believed he had no  
 14 authority to limit or withdraw his consent. First, there is no indication that Winn or Fisher used  
 15 language that would indicate that the defendant could not withdraw his consent. On the contrary,  
 16 Gonzalez was warned twice that he had the right to refuse consent. Further, at no time was he told  
 17 that once consent was given, he could no longer withdraw his consent. The search was conducted  
 18 out in the open on a busy road. There is no indication that the physical surroundings made Gonzalez  
 19 think that he had no authority to withdraw his consent. Evidence was presented at the hearing  
 20 showing that he was asked to face the front of the patrol car with his hands on the hood while the  
 21 other officer conducted the search. It is LVMPD protocol to have every suspect face the patrol car  
 22 during a vehicle search for officer safety. The Ninth Circuit in McWeeney stated that there is no  
 23 constitutional right to observe a search, only a constitutional right to withdraw consent once it is  
 24 given. McWeeney, 454 F.3d at 1037 n.2. Gonzalez continued to have the right to withdraw his  
 25 consent by simply stating so. Although he was not allowed to observe the search, officer safety  
 26 outweighed his right to observe the search.

27 No means was used to prevent Gonzalez from observing the search other than having him  
 28 face the patrol car with his hands on the hood. Fisher did not have his gun drawn nor was the

1 defendant handcuffed or held down by Fisher. There was no change in the circumstances between  
2 when consent was obtained and when the officers conducted the search. Evidence was presented at  
3 the suppression hearing indicating that the officers and Gonzalez all remained calm during the  
4 investigation and search. The entire process was conducted in a calm manner. Nothing indicated that  
5 Gonzalez lost his authority to withdraw or limit his consent. Lastly, there was no pressure applied  
6 to prevent him from observing the search or voicing his objection to the search. The defendant knew  
7 that the officers were going to search inside his trunk. Even though he was asked to stand facing the  
8 patrol car with his hands on the hood for officer safety, Gonzalez was free to voice his objection. He  
9 failed to do so. Based on these factors, a reasonable person in the defendant's circumstance would  
10 not feel that the officers actions were intended to coerce him into believing that he could not  
11 withdraw or limit his consent once it was given.

12 Based on the totality of the circumstances, and considering the factors outlined in  
13 McWeeney, the Court finds that Officer Winn and Fisher did not create a setting in which a  
14 reasonable person would believe that he or she had no authority to limit or withdraw the consent.

#### 15 CONCLUSION

16 The Court concludes that: (1) Officer Winn's actions did not constitute an unreasonable  
17 seizure within the Fourth Amendment; (2) the scope of the traffic stop was constitutional; (3)  
18 Gonzalez gave valid consent to allow the officers to search his bag; and (4) Gonzalez was not  
19 coerced into believing that he had no authority to withdraw or limit his consent. Defendant's Motion  
20 to Suppress (#13) should be denied.

#### 21 RECOMMENDATION

22 Based on the foregoing and good cause appearing therefore,

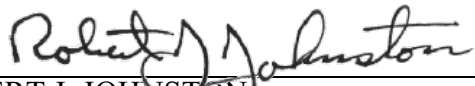
23 IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that the  
24 Defendant's Motion to Suppress (#13) be **DENIED**.

#### 25 NOTICE

26 Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must  
27 be in writing and filed with the Clerk of the Court on or before March 3, 2008. The Supreme  
28 Court has held that the courts of appeal may determine that an appeal has been waived due to the

1 failure to file objections within the specified time. Thomas v. Arn, 474 U.S. 140, 142 (1985). This  
2 circuit has also held that (1) failure to file objections within the specified time and (2) failure to  
3 properly address and brief the objectionable issues waives the right to appeal the District Court's  
4 order and/or appeal factual issues from the order of the District Court. Martinez v. Ylst, 951 F.2d  
5 1153, 1157 (9th Cir. 1991); Britt v. Simi Valley United Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

6 DATED this 20<sup>th</sup> day of February, 2008.

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10 ROBERT J. JOHNSTON  
11 United States Magistrate Judge  
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